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**Family Service Agency of San Francisco and Service Employees International Union, Local 790, AFL-CIO. Case 20-CA-28191**

March 30, 1998

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND LIEBMAN

Pursuant to a charge filed on December 8, 1997, the General Counsel of the National Labor Relations Board issued a complaint on December 22, 1997, and an amendment to complaint on January 16, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 20-RC-17201. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed answers admitting in part and denying in part the allegations in the complaint and the amendment to the complaint.

On February 18, 1998, the General Counsel filed a Motion for Summary Judgment. On February 19, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the grounds that the Union has failed and refused to file the reports required by the Labor Management Reporting and Disclosure Act, and that the Board has failed to consider certain issues raised by the Respondent's objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh*

*Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.<sup>1</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a nonprofit, charitable California corporation with a place of business in San Francisco, California, has been engaged in providing social services to the general public pursuant to contracts with state and local government entities. During the 12-month period ending November 30, 1997, the Respondent, in conducting its business operations, received gross revenues in excess of \$250,000 and purchased and received goods and/or services valued in excess of \$2500 which originated from points located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held January 8, 1997, the Union was certified on October 17, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees, including Assistant Teachers, Teacher's Aides and Supervisory Teachers employed by the Employer at its Family Development Center located at 2730 Bryant Street, San Francisco, California; excluding the child Development Specialist, the Teenage

<sup>1</sup>In its answer, the Respondent denies par. 1 of the complaint, which alleges that the charge in this proceeding was filed by the Union on December 8, 1997, and that a copy was served on the Respondent on December 11, 1997. In addition, although the Respondent admits that the Union requested bargaining and that it failed to bargain, the Respondent denies the complaint allegations that these events took place on October 20 and 23, 1997, respectively.

The General Counsel has attached to the Motion for Summary Judgment a copy of the charge and the affidavit of service, which establish that the charge was filed on December 8, 1997, and served on December 11, 1997. The General Counsel also attached a copy of an October 20, 1997 letter, sent by the Union to the Respondent, in which the Union requested the Respondent to meet and negotiate with it. The Respondent does not dispute the authenticity of these documents. Finally, the Respondent itself attached to its memorandum in opposition to Motion for Summary Judgment a copy of the letter it sent the Union on October 23, 1997, acknowledging receipt of the Union's October 20, 1997 communication and stating that it "has not yet decided whether to accept the NLRB certification." Accordingly, we find that the Respondent's denials raise no material issues of fact warranting a hearing.

Pregnancy Presentation Program, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

#### B. *Refusal to Bargain*

Since October 20, 1997, the Union has requested the Respondent to bargain, and, since about October 23, 1997, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after October 23, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Family Service Agency of San Francisco, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Service Employees International Union, Local 790, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following

appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees, including Assistant Teachers, Teacher's Aides and Supervisory Teachers employed by the Employer at its Family Development Center located at 2730 Bryant Street, San Francisco, California; excluding the child Development Specialist, the Teenage Pregnancy Presentation Program, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in San Francisco, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 20 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 23, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 30, 1998

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William B. Gould IV, Chairman

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Sarah M. Fox, Member

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Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Service Employees International Union, Local 790, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time employees, including Assistant Teachers, Teacher's Aides and Supervisory Teachers employed by us at our Family Development Center located at 2730 Bryant Street, San Francisco, California; excluding the child Development Specialist, the Teenage Pregnancy Presentation Program, guards and supervisors as defined in the Act.

FAMILY SERVICE AGENCY OF SAN  
FRANCISCO